DEATH REFERANC No.12 OF 2007

Reference under section 366 of the Code of Criminal Procedure made by Additional Sessions Judge I, Patna vide his letter no.370 dated 5.10.2007.

The State of Bihar
Versus
1. Anand Mohan
2. Prof. Arun Kumar Sinha
3. Akhlakh Ahmad

WITH

CRIMINAL APPEAL (DB) NO.1282 OF 2007

Lovely Anand the then elected Member of Parliament wife of Sri Anand Mohan, resident of village- Panchgachhia, Police Station- Bihra, District Saharsa .... Appellant

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WITH

CRIMINAL APPEAL (DB) NO.1308 OF 2007

Vijay Kumar Shukla alias Munna Shukla, son of late Ram Das Shukla, resident of village Khanjaha Chak, P.S. Lalganj, District Vaishali.

.... Appellant

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WITH

CRIMINAL APPEAL (DB) NO.1318 OF 2007

Sashi Shekhar Thakur son of Late Madanendra Pd. Thakur, resident of Mohalla Juran Chhapra, P.S. Brahamyma, District Muzaffarpur

.... Appellant

WITH

CRIMINAL APPEAL (DB) NO.1327 OF 2007

Harendra Prasad @ Harendra Prasad Sahi, son of late Pasupati Thakur, resident of Chakiya House, Imali Chatti, P.S. Brahampura, District Muzaffarpur

…. Appellant

WITH

CRIMINAL APPEAL (DB) NO.1345 OF 2007

Anand Mohan son of late Sachita Nand Singh, the then Member of Legislative Assembly and elected Member of Parliament, resident of village- Panchgachhia, Police Station Bihra, District Saharsa

…. Appellant

WITH

CRIMINAL APPEAL (DB) NO.1354 OF 2007

Prof. Arun Kumar Sinha alias Arun Kumar Singh son of late Basawan Singh, resident of Chakkar Maidan, P.S. Kazi Mohammadpur, District Muzaffarpur …. Appellant

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WITH

CRIMINAL APPEAL (DB) NO.1361 OF 2007

Akhlaque Ahmad (written as Akhlak Ahmad in the order) son of Md. Zubair Khan, resident of Ghushian, P.O. Ghusian, P.S. Bikramganj, District Rohtas ….. Appellant

VERSUS

State of Bihar ….. Respondent
(In all the Appeals)

Appeals against the judgment and order of conviction dated 1.10.2007/ 3.10.2007 passed by Additional Sessions Judge I, Patna in Sessions Trial No.115 of 1996

For the Reference : M/s Shymeshwar Dayal, Mukeshwar Dayal
and the State Shiwesh Chandra Mishra, Abhimanyu Sharma, Ashwani Kumar Sinha, Dilip Kumar Sinha and Rajendra Nath Jha, APPs.

For the Appellants : M/s Surendra Singh, Kanhaiya Prasad Singh, Ganesh Prasad Singh, Senior Advocates, Akhileshwar Prasad Singh, Ajay Kumar Thakur, P.N.Shahi, Sumant Singh, Ashutosh Kumar, C.M.Jha, Ram Vinay Singh Ravindra Nath Dubey, S. Parasmani, Ashok Kumar and Mukesh Kumar, Advocates

For Intervener : M/s Rakesh Kumar and Prabhu Narayan Sharma, Advocates.

P R E S E N T

THE HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
THE HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM

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Shiva Kirti Singh,J. The Death Reference under consideration and the connected seven Criminal Appeals arise out of Muzaffarpur Sadar P.S. Case No.216 of 1994 dated 5.12.1994 corresponding to G.R. Case No.2660/94 which led to joint trial of 36 accused persons for the offence under Sections 147, 302/149, 307/149, 427, 302/109 and 302/114 of the Indian Penal Code (hereinafter referred to as IPC). By the judgment and order dated 1st October, 2007 passed in Sessions Trial No.115/1996 by learned Additional Sessions Judge-1, Patna, seven appellants have been convicted for various offences

leading to infliction of death penalty to three accused namely, Anand Mohan, Professor Arun Kumar Singh and Akhlak Ahmad for the offences under Section 302/149 and 302/109. They have also been awarded R.I. for five years under Section 307/149, R.I. for one year under Section 427/149 and R.I. for 1 year under Section 147 of the IPC. Accused, Lovely Anand, a lady has been similarly convicted but for the offence for which death sentence has been awarded to the aforesaid three accused, she has been awarded life imprisonment and a fine of Rs.25,000/- and in default thereof simple imprisonment for two years. The remaining three accused have also been held guilty of all the offences except offence under Section 302/109 IPC and have been awarded similar sentence as awarded to accused, Lovely Anand. The remaining 29 accused have been acquitted of all the charges. The Death Reference and connected appeals have been heard together and shall be governed by this common judgment.

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2. The informant of this case is Mohan Rajak, Deputy Superintendent of Police (East), Muzaffarpur (PW-14). His typed report running into four pages has been made the basis of First Information Report lodged on 5.12.1994 at 22:10 P.M. for an occurrence which allegedly took place on the same day at about 16-15 P.M. The place of occurrence is village, Khabra situated on

National Highway-28 at a distance of about three kilometers east of the Police Station. From the FIR it transpires that on 4.12.1994 in the night hours one, Kaushalendra Kumar Shukla @ Chhotan Shukla said to be a criminal and his associates were murdered by some unknown persons on NH-28 under Brahampur P.S. of Muzaffarpur district. Their autopsy was conducted on 5.12.1994 at Srikrishna Medical College Hospital, Muzaffarpur. On hearing the news of said murders the supporters of Chhotan Shukla and of Bihar People's Party gathered at the hospital in large number. They were agitated. Apprehending breach of law and order, Sub Divisional Officer (East), Tara Rajak-(PW-12), Sub Divisional Officer (West),B.P. Singh, (PW-13), Executive Magistrate, M.o. Siddiqui, Inspector-cum-Incharge, Mithanpura, B.D.Nigam-(PW-6), Officer Incharge, Ahiyapur, N.P. Dev (PW-9), Sub Inspector, Gaya Prasad Chaubey of Ahiyapur P.S-(PW-5), Sub Inspector, K.N. Chaudhary, Officer Incharge, Sadar P.S.(PW-7), ASI, S.N.Singh, Sub Inspector, Ravindra Sharma of Mithanpura P.S.(PW-3), Sub Inspector, Raja Ram of Town PS (PW-10), Inspector Sadar "B" J.P. Narain (PW-8) along with armed police force and lathi force were present at the hospital. After autopsy the dead bodies were taken from the hospital at about 11:30 A.M. to the house of Chhotan Shukla and they were escorted by the aforesaid police officials. The procession was

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agitated and was led by appellant, Arun Kumar Singh, Ramesh Thakur, appellant, Shashi Shekhar Thakur, Ram Babu Singh, appellant, Harendra Kumar, appellant, Vijay Kumar Shukla @ Munna Shukla and others. Some slogans were raised in the way against the administration. At the residence of Chhotan Shukla floral tributes were paid to the dead persons present there along with appellant, Anand Mohan,a Member of Legislative Assembly, Lovely Anand, a Member of Parliament. At about 3:30 P.M. the procession started for the ancestral home of Chhotan Shukla in village, Jalalpur, P.S. Lalganj. District, Vaishali along with his and another dead body. There were about five thousand persons in the said processions which allegedly included some criminal elements also. The procession passed through some places in the town and reached Bhagwanpur Chowk where it was stopped for some time. That procession was led by appellants, Anand Mohan and Lovely Anand who were in their white coloured Contessa car and by appellants, Arun Kumar Singh, a former Member of Legislative Assembly, Akhlak Ahmad, a former Member of Legislative Assembly, the appellant, Harendra Kumar, Rameshwar Wiplavi and others. Various types of vehicles such as Buses, Maxi, 407 Tata vehicle, Jeep, Car, Maruti, Motocycle/Scooter were in the procession along with own buses and vehicles of Chhotan Shukla

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and all his relations. Anand Mohan and Lovely Anand were sitting in their car bearing No.WB-16-8253. There were some unnumbered vehicles also. Lovely Anand, Akhlak Ahmad, Professor Arun Kumar Singh and Anand Mohan exhorted the crowd to take revenge for the murder and if administration would come in the way then it should also be taught a lesson and there should be a "Holi" of blood in the whole of Bihar. After such inflammatory slogans the procession which consisted of a large number of persons slowly proceeded on the National Highway towards Ramdayalu Nagar. Along with the procession, besides the earlier named officials, Sub Inspector, K.D. Singh, Officer Incharge, Kazimohammadpur (PW-11), Inspector, B.P. Chaudhary of Kazimohammadpur, Sub Inspector, Ramchandra Prasad of Sadar PS (PW-1), Sub Inspector, Amarnath Prasad of Kazimohammadpur(PW-4) and others also proceeded along with armed forces and lathi forces. Along with the informant and Sub Divisional Officer (East) and (West) also there ware armed forces of 2 to 6 and a lathi force of 34.

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3. It is further case of the informant in his typed report that in front of the procession were Sri B.D. Nigam and armed forces whereas other officials and forces were at the end of the procession with a view to escort the same and in this manner the procession started for Lalganj. At about 4:15 P.M. when it reached

Khabra village on the National Highway then from the middle part of the procession noise and exhortation for assault was heard. The informant and other officials ran to that place and saw that on the right flank of the road a white coloured Ambassador car bearing No.777 was overturned. The car had a plate scripted D.M. Gopalganj. A man was lying on the ground in injured condition. The informant saw appellants, Anand Mohan,Lovely Anand, Professor Arun Kumar Singh and some others repeatedly asking one Bhutkun to kill because the person was a D.M. belonging to administration. On this the crowd became aggressive and a fair complexioned, tall and slim person aged about 25-26 years took out a revolver from his waist and after firing shots melted in the crowd. As a result the person who was lying near the Ambassador car was seriously injured. The Officer Incharge of Kazimohammadpur PS (PW-11) disclosed to the informant that the assailant was Bhutkun Shukla. Due to gravity of the situation the Sub Divisional Officer (East) ordered for lathi charge. On account of such lathi charge there was commotion all around. Some persons received injuries and started running in different directions. Amongst the assailants he claimed to identify Pramod Sharma, Om Prakash, Vijay Prasad Singh, appellant, Harendra Kumar, Lalan Sharma, Appellant, Shashi Shekhar Thakur, Dhirendra Mishra, Rakesh Kumar @ Pappu,

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Rambabu Singh, Niranjan Prasad, appellant, Vijay Kumar Shukla @ Munna Shukla, Arun Kumar and Ranjeet Kumar. Police Inspector,B.P. Chaudhary of Kazimohammadpur also claimed to identify several persons including appellants, Harendra Kumar, Vijay Kumar Singh @ Munna Shukla, Anand Mohan, Lovely Anand and Professor Arun Kumar Singh. The Officer Incharge, Sadar PS (PW-7) also claimed to identify several persons including appellants, Shashi Shekhar Singh, Akhlak Ahmad, Anand Mohan, Lovely Anand, Vijay Kumar Shukla @ Munna Shukla. Police Inspector, J.P. Narain also claimed to identify several persons including some of the appellants. He also claimed to have heard appellants, Anand Mohan, Lovely Anand and Professor Arun Kumar Singh exhorting the crowd and asking Bhutkun Shukla to assault on which Bhutkun fired thrice on the injured person who was later found to be D.M. of Gopalganj. The other officials also claimed to identify many persons.

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4. It is further alleged in the FIR that after assault the assailants boarded various vehicles and went away speedily towards Hajipur. Near the car there were two other persons who disclosed that the injured who was lying unconscious was D.M. of Gopalganj. They disclosed that D.M. had attended meeting at Hajipur and while returning when they were passing at the place of occurrence, some

members of the procession on seeing their car raised slogans to assault and started throwing brickbats. They claimed to have heard some persons in the crowd exhorting Bhutkun to assault on which a young person of 25-26 years took out a weapon from his waist and fired thrice on the head of the D.M. and thereafter disappeared in the crowd. They also disclosed that they came to know from the crowd that the name of the assailant was Bhutkun Shukla. The informant carried the injured D.M. on his Gypsy to S.K.Medical College and Hospital for treatment, along with Officer Incharge, Ahiyapur (PW-9),ASI, Raja Ram (PW-10) and some others. The information of the occurrence was given by the informant immediately through wireless to the District Headquarters and Superior Officers. Information was also given to the District Administration, Vaishali on wireless that the processionists had shot the D.M., Gopalganj and ware fleeing towards Hajipur on different vehicles. The informant boarded the vehicle of Sub Divisional Officer (East) and along with other officers and police force chased the processionists. In the way near a village Chandrahatti they saw some miscreants getting down from an Ambassdor car and running away. Seven persons were caught after chase. They had injuries on their persons. They included appellant, Professor Arun Kumar Singh also. When the informant in course of chase reached Hajipur then he learnt that

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Vaishali police had already apprehended 15 persons with their vehicles. Appellants, Anand Mohan and Lovely Anand were amongst them. Some of those 15 also had injuries on their persons which appeared to be due to lathi charge at village Khabra. Those 15 persons allegedly admitted that they were in the funeral procession and when it had reached Khabra, D.M.,Gopalganj was assaulted and thereafter they were returning to Patna. Those 15 persons included appellants, Anand Mohan, Lovely Anand and Akhlak Ahmad and a bodyguard of Anand Mohan, MLA. He returned to Muzaffarpur Sadar PS along with arrested persons and three seized vehicles. There he learnt that the D.M.,Gopalganj, Sri G.Krishnayya had died in course of treatment in the hospital. It was claimed that all the 28 named persons in the FIR and 50-60 unknown persons had by forming an unlawful assembly and by delivering inflammatory speech had instigated people to indulge in assault and brick batting which caused damage to the car of the D.M. and death of the D.M. on account of firing. The signature of the informant on the typed report has been marked as Exhibit-6 and the formal FIR has been marked as Exhibit-3.

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5. According to the prosecution, besides the District Magistrate, Gopalganj who died due to assault, in the same occurrence murderous attack was made upon three other persons,

namely, Deepak Kumar, Driver(PW-17), T.M.Hembram, Bodyguard of the D.M.(PW-21) and P.L.Tangri, a Photographer said to be traveling in the same car with the deceased District Magistrate. He has not been examined as a witness although out of three alleged injured only his injury report has been brought on record through Dr.Nagendra Pd.Sinha (Pw-23). PW-25, Chandrika Prasad Kiran was posted as additional Superintendent of Police, Mazaffarpur at the relevant time. He has claimed to have investigated this case as the first I.O. upon orders to that effect by S.P.,Muzaffarpur. He claims to have recorded further statement of the informant on 6.12.1994 at 1:00 A.M. and thereafter along with informant he inspected the place of occurrence with the help of torch and petromax. The village, Khabra where the occurrence took place was found to be four kilometers from zero mile Muzaffarpur. The road (NH) at that place goes from North to South but is slightly inclined towards the East to West at the actual place of occurrence. The pitched road had a width of about 23 feet with 8 feet of kuchha flank on both sides. The car of D.M.,Gopalganj bearing No.BHQ-777 was coming from south to north i.e. from Hajipur to Muzaffarpur. He found that the vehicle had been subjected to assault since about 111 feet from the actual place of occurrence. The assault was near an electric pole on the western side of kuchha flank. From that place to

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the place where the car was found overturned was littered with broken glass pieces of the same car which was found overturned on its left side on the western kuchha flank heading towards north. Both the wheels of the right side were up in the air. At the place of occurrence broken glass pieces and broken VIP light glass and bulbs were found scattered. The wind screen both front and rear as well as looking glass on the front body were found broken. Many items fitted inside the case were also found in broken condition including glass items on the dashboard. The upper portion of rear dickey was found dented. Some papers and other articles of the District Magistrate were found on the rear seat. The bunch of keys of the car was found at a distance of 10 feet towards west in bushes. A wrist watch with some blood and one of the straps broken and spectacles with golden frame were found near the car. Some other articles such as broken thermos and tiffin-carrier were also found there. 14 feet North-East of the car, 6 feet from the pitched road on the western kuchha flank large quantity of blood mark was found. At that place two broken blood stained teeth were also found. That was the spot where the D.M. was found in injured condition and from where he had been sent to the hospital. At a distance of 76 feet West from the car was Southern corner of a wall of a factory. About 31 feet south of that place and 15 feet north of a mango tree was place where

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some blood spots were found along with brick having blood marks. In the near vicinity brick pieces were found at various places showing brick batting at that place. This witness had prepared a sketch map of the place of occurrence on page 5 of the case diary which he has proved as Exhibit-11. He has also proved seizure list of articles found at the place of occurrence as Exhibit-12.

6. He has admitted that in the relevant column of the FIR the name of (PW-24) Dhiraj Kumar is shown as the Investigating Officer and to him this witness claims to have handed over the investigation at about 8:15 A.M. of 6.12.1994.

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7. Dhiraj Kumar (PW-24) is the second Investigating Officer of this case who at the relevant time was posted as DSP, Muzaffarpur Town. After taking charge of investigation from PW-25, he claims to have recorded the statement of witnesses as well as of several accused persons including appellants, Anand Mohan, Lovely Anand and Akhlak Ahmad who were sent to Chief Judicial Magistrate, Muzaffarpur on 6.12.1994 for the purpose of remand. After completing investigation he submitted charge sheet on 31.1.1995. In the charge sheet accused, Bhutkun Shukla and Dhirendra Mishra were shown as absconders but later accused, Birendra Mishra appeared in the case and faced trial. In respect of Bhutkun Shukla a report was submitted by the police that he was

killed on 16.2.1997 for which Lalganj PS Case No.100/97 had been instituted.

8. After cognizance and supply of police papers the case was committed to the court of sessions on 24.2.1996. One accused, Munna Kapar absconded and hence his case was split up and the remaining accused persons including the appellants were put on trial because they pleaded not guilty to the charges. During trial one accused, Rameshwar Biplavi died and out of remaining 36 persons 29 were acquitted and the 7 appellants were convicted and sentenced by the judgment and order under appeal, as already noticed.

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9. In order to prove the charges, the prosecution has examined altogether 25 witnesses. Out of them PW-1 to 11 namely, Ramchandra Prasad, Jeevan Bhengra, Ravindra Sharma, Amarnath Prasad, Gaya Prasad Chaubey, B.D. Nigam, Kaushalya Nand Choudhary, Jai Prakash Narain, Nagendra Prasad Deo, Raja Ram and Kumar Devendra Singh are all police officials who have claimed to be with or behind the procession till the occurrence. PW-12, Tara Rajak, SDO, Sadar (East) and PW-13, Basudeo Prasad Singh, SDO, Sadar(West) have also claimed to be present along with the police officials behind the procession till the occurrence. PW-14, Mohan Rajak, DSP, as noticed earlier is the informant of

this case. PW-15, Dr. Naresh Kumar, PW-16, Dr.Mumtaz Ahmad and PW-23, Dr. Nagendra Prasad Sinha have proved injury reports and postmortem report. PW-15 has proved injury reports of accused Satyendra Kumar, Akhlak Ahmad, Rameshwar Biplavi, Ramesh Thakur and Prakash Chandragupta as Exhibits-7 to 7/5. PW-16 has proved the postmortem report of deceased G. Krishnayya, D.M., Gopalganj as Exhibit-8 and PW-23 has proved the injury report of Sri P.L. Tangri, the photographer traveling with the deceased, as Exhibit-7/6.

10. Deepak Kumar, PW-17 is the driver of the car of the D.M. He and PW-21, D.N. Hembram, a Security Guard of the deceased, D.M. are also eyewitnesses of the occurrence. Pw-18, Umesh Kumar Sinha was Incharge, Director of Forensic Science Laboratory, Patna. He has claimed that along with a team of finger print experts etc he went to the place of occurrence on 8.12.1994 and collected blood stained earth and broken pieces of glass from the place of occurrence. They also collected broken pieces of glass of the concerned car from Sadar PS and after marking those articles he gave it to the Investigating Officer, Dhiraj Kumar, DSP. A document was prepared to that effect which he has proved as Exhibit-9. According to him the blood stained earth was collected from near a mango tree. PW-19, Jawahar Pd.Singh was an employee

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of Forensic Science Laboratory, Patna. He was also a member of the team along with PW-18. He has proved his signature on Exhibit-9.

11. PW-20, Awadhesh Mishra was an Executive Magistrate and in that capacity he had accompanied the proecession. He is a civil official and in the same category as PWs-12 and 13. It has already been noticed that PW-21, D.N. Hembram was Security Guard of the deceased D.M. and like the driver PW-17 he was traveling in the same car at the time of occurrence. PW-22, Gupteshwar Singh was posted as Assistant Sub Inspector in Muzaffarpur District at the time of occurrence. He also participated in the investigation of the case from 14.12.1994 to 16.12.1994. He has deposed that a requisition was sent by him to the treating physician at Sadar Hospital, Muzaffarpur for the injury report of P.M. Tangri, Photographer. He has proved the said requisition as Exhibit-1/6. It has already been noticed that PW-24, Dhiraj Kumar, DSP is the second Investigating Officer and PW-25, Chandrika Prasad Kiran investigated the case for few hours as Additional S.P., Muzaffarpur and gave charge of investigation to PW-24.

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12. The defence of the accused persons including the appellants is denial of their involvement in the murder and also of false implications on account of political rivalry. Besides bringing on record a large number of documents-Exhibit-A to A/11, Exhibit-

B to B/25, Exhibit-C and C/19 the defence has also examined 12 witnesses on the point of alibi of appellants Anand Mohan, Lovely Anand and Akhlak Ahmad. However, during arguments before this Court the plea of alibi was not pressed and therefore the defence witnesses are not relevant. However, some of the documents exhibited on behalf of the defence were strongly relied upon, particularly to support the submission that the FIR has been ante dated and ante time and the earliest version of the occurrence has been suppressed. However, these documents shall be considered at later and appropriate stage.

13. Before proceeding to examine the submissions advanced on behalf of the appellants and analyzing the relevant evidence in the light of submissions of the parties, it is useful to keep in mind that the defence has not made any serious challenge to the time and place of occurrence. Damage to the car of the deceased and his death in the occurrence is also not in dispute. However, the defence has seriously challenged the presence of such a large number of police witnesses at the place of occurrence, the truthfulness and time of the FIR and the manner of the alleged occurrence. According to the defence the unfortunate occurrence was committed by unknown persons, mainly by the way side crowd which had gathered on the western flank of the road in Kabra village

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and not by processionists who had left Bhagwanpur Chowk in Muzaffarpur on vehicles which were speeding away towards Lalganj so that cremation of the dead bodies could be held without delay. The submission on behalf of the appellants is that in order to cross the stretch of road over which procession was going by vehicles, admittedly the driver of the deceased DM did not stop and moved on his left flank of the road; thereafter some occurrence took place which enraged the people who had gathered on the western flank at village, Khabra, leading to brickbat and assault. According to defence the real version leading to the occurrence has been suppressed by the prosecution including the Driver and the Body-guard of the deceased and an exaggerated and false case was created after long deliberations by some of the officials under pressure of the then political party and its leaders on account of political rivalry and because of impending elections to the Legislative Assembly. It is further case of the defence that admittedly the crowd and the procession was unarmed except the alleged shooter, Bhutkun Shukla whose small arm could not be visible to the persons in the procession and the alleged speeches at Bhagwanpur Chowk were admittedly without any dais, mikes or loudspeaker. It was submitted that evidence would show that there was no response from the crowd, no threat of breach of peace and after a halt of about 10

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minutes the procession which was a funeral procession and not an unlawful assembly started for Lalganj by vehicles in a peaceful and orderly manner. It was also submitted on behalf of the defence that according to evidence on record the procession was being escorted by police at the front and at the rear and it stopped only after occurrence had taken place and after the noise and exhortation for assault were heard by the persons in the procession including the police who all were moving on the highway on their vehicles. It was also submitted on the basis of medical evidence that the deceased has received fire arm injuries on the two sides of his head at such different angles which could not have been possible had the injured been lying on the ground and the assailant shot while standing, as alleged by the prosecution witnesses.

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14. Further submissions on behalf of the appellants to the effect that there is contradiction in the statement of witnesses as to utterance of the words of exhortation at the place of occurrence and names of exhortationists and some other contradictions shall be considered later at appropriate places.

15. On the other hand on behalf of the State it was submitted that the prosecution witnesses including the police witnesses are truthful and reliable. Although PWs 17 and 21, the Driver and the Bodyguard of the deceased District Magistrate did

not identify anybody but there presence at the place of occurrence cannot be doubted and they fully support the prosecution case. It was submitted that at the place of occurrence in village Khabra there was no other mob or gathering and it were the members of the funeral procession going by vehicles, who stopped the vehicle of the deceased and committed brick batting as well as assault leading to death of the District Magistrate, Gopalganj. It was also submitted that the station diary's entries such as Exhibit A/5 and A/4 have been brought on record by the defence and these earliest versions of the occurrence do not contradict the prosecution case and the delay of few hours in lodging the FIR in such a case involving a Member of Parliament, a sitting MLA and also an ex-MLA is easily explained on account of commotion and hence, it is not material. According to State counsel, the charges have been fully established against the appellants and the death sentence awarded to Appellants, Anand Mohan, Arun Kumar Singh and Akhlaqueue Ahmad are in accordance with law and need no interference.

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16. As noticed earlier, there are broadly three categories of prosecution witnesses in this case. The first category consists of police officials from various police stations of Muzaffarpur District. It includes PWs-1 to 11 and 14. They all have deposed as witnesses present at or near the place of occurrence. The

second category consists of Civil officials such as PW-12, PW-13 and PW-20. In this very category the remaining eyewitnesses PW-17, the Driver and PW-21, the Bodyguard of the deceased may also be included. They all were at the place of occurrence. The third category of witnesses would be the three doctors, PW-15,16 and 23 the two employees of Forensic Science Laboratory, Patna, PW-18 and 19 and the three police officers associated with the investigation of the case i.e. PW-22, PW-24 and PW-25.

17. It will be useful to first deal with police eyewitnesses in the category one. PW-1, Ramchandra Prasad was an Assistant Sub Inspector of Police at Sadar Police Station. He claims to have left the police station on 5.12.1994 at 11.15 am for Bhaganwanpur Chawk to attend the law and order duty. At about 3.45 pm the funeral procession of Late Chotan Shukla reached there. It consisted of 400-500 persons on big and small vehicles. The procession stayed there for a little while and was addressed by appellants Anand Mohan, Lovely Anand, Arun Kumar Singh etc. They stated that blood shall be avenged by blood and if administration creates obstruction then it will also be taught a lesson. He has given the sequence of vehicles in the procession by claiming that a police Jeep was in the front carrying Inspector B.D.Nigam (PW 6), Sub Inspector Ravindra Sharma (PW 3) and

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police force. Behind them was a Tata 407 vehicle carrying the dead body of Chotan Shukla and one other person. Next was the contessa car carrying Appellants Anand Mohan, Lovely Anand and their Bodyguard. Behind them was an Ambassador Car carrying Arun Kumar, Thakur etc. Thereafter there were 30-35 small and big vehicles carrying people inside as well as on the roof. Behind them were some motorcycles followed by escort party of Sadar PS. This was followed by a vehicle carrying Sub Inspector Amar Nath Prasad (PW 4) and an Executive Magistrate (PW 20) and other police force. Behind them were police and other officials. The said procession reached near village Khabra at about 4.15 pm. Somewhere from the middle of procession came the sound of "Maro Maro". All the police officials and Magistrate proceeded towards the source of that sound. On reaching the place of occurrence he saw on the right flank an overturned car which carried a plate depicting DM, Gopalganj. A person was there in injured condition. There appellant Anand Mohan was speaking as to why Bhutkun is watching and ordered him to shoot. A tall, slim and fair complexioned boy of 25-26 years came out of the crowd and shot at the injured person. The SDO (East), PW 12, ordered for Lathi charge which caused injury to some persons who went hither thither. All vehicles proceeded towards Ramdayalu Nagar. PWs. 5, 9 and

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10 took the injured to SKMCH (Hospital) and other police officers and Magistrate proceeded to chase the members of the procession. In course of chase, near village Chandrahatti a white car was stopped. The occupants of the car started fleeing away but they were apprehended they were having injuries and hence, it appeared that they were in the procession and had been injured in the Lathi charge at Khabra. The apprehended persons were taken to Hajipur. There police of Vaishali district disclosed that some persons involved in the occurrence had been apprehended and kept in the Circuit House at Hajipur. The persons at Chandrahatti and Hajipur Circuit House were brought to Muzaffapur Sadar Hospital. From there he brought the accused persons to Ahiyapur police station and after subjecting them to search, they were put inside the lock up of that police station. Some accused had received injuries for which they were sent to Hospital at Muzaffarpur and after treatment they were again locked up in the Hazat. The Driver and the Bodyguard of the DM, Gopalganj had also received minor injuries. On returning to Hajipur, it was learnt that the DM had died in the Hospital at Muzaffarpur. He claimed to identify Appellants Anand Mohan, Lovely Anand and Arun Kumar Singh as one of the persons who had instigated and exhorted the crowd. He also claimed to identify accused Shashi Shekhar Thakur.

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18. In the very beginning of his cross-examination in paragraph 10 he has denied to have any idea regarding distance of Hajipur from Muzaffarpur and could not remember when he proceeded from Muzaffarpur to Hajipr and how much time was taken in the journey. He asserted that he could not disclose whether the said distance was 5 kms or 500 kms. In further cross-examination on next day, he claimed that at Hajipur the accused persons were handed over to ASI Sri SN Singh (not examined) but who handed them over is not known to him. Initially, he said that he could not remember when he left Hajipur but in the next sentence he claimed to have left Hajipur at 8.45 pm and further claimed that it took about one hour and 30-35 minutes to reach Muzaffarpur from Hajipur. He claimed to have gone straight to Muzaffarpur Sadar police station and there he met Mohan Razak (PW 14). He had no talks with PW 14 in respect of the occurrence. In paragraph 13 he claimed to have seen three persons giving speeches at Bhagwanpur Chowk. He could not say as to how many persons gave speeches there. He claimed to be at the end of the procession. According to him, there was not a single person on foot in the said procession, all were on vehicles. The procession was less than a kilometer in length. He could not disclose the registration number of the police vehicle on which he was going nor the number of other occupants.

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In paragraph 15 he has replied that when he saw the deceased lying down there were 30-40 persons surrounding him and he did not go inside the circle. By that time firing had already been done. By that time PW 12 and PW 13, SDO (East) and SDO (West) were also there. According to him when the firing was done by that time no police officer had reached at the place of occurrence. He had gone to the place of occurrence running along with the Lathi force and Armed force. According to his evidence in cross examination, the miscreants were chased by the police party but nobody could be apprehended. Some fled on vehicles and some fled towards left and right of the road. There was no brick batting on them from Bhagwanpur Chowk to Khabra village. In paragraph 32, he has admitted that in his earlier statement to police he had not stated that in the speeches there was mention of teaching a lesson to the administration. The vehicles in the procession were moving in a row and the motorcade reached village Khabra in about 15 minutes time from Bhagwanpur Chowk. In paragraph 68, he has again admitted that till the procession reached village Khabra no breach of peace had occurred. He has denied knowledge of the fact that at the time of murder of Chotan Shukla, Janta Dal was in power and whether Bihar People Party was opposed to Janta Dal or not. According to him as per station diary entry no.141 dated 5.12.1994

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ASI R.V. Sinha (not examined) who was deputed for duty in relation to law and order at Bhagwanpur Chowk and he had returned from that duty at 4.10 pm. He admitted that in the station diary there was no entry showing such duty upon him. In paragraph 75 he has replied that on reading station diary entry no.142 (Exhibit A/5) dated 5.12.1994 of Sadar PS it transpires that at 4.35 pm a rumour was heard that near Khabra village an occurrence of assault by processionists had taken place. For verifying that rumour Sub Inspector R.V.Sinha had been sent and station diary entry no.144 (Exhibit A/4) disclosed that after verification he came back to the police station. He has denied the suggestion that after verification by R.V.Sinha police and administrative officers rushed towards the place of occurrence and they saw only the damaged car and the injured District Magistrate at the place of occurrence. In respect of entry no.148, on perusal he stated that ASI R.V.Sinha reported only what he heard at Khabra. In respect of station diary entry no.149 recorded at 22.10. pm, after perusal he replied that it is a entry of three pages in which there is no mention of the procession stopping at Bhagwanpur Chowk or any speeches there or any breach of peace. There was no mention of any firing or shooting of the deceased District Magistrate. On the basis of station diary entry no.149 he has further replied that it disclosed his arrival at the police

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station and that all officials had returned from Hajipur together. He also clarified that the said entry did not disclose that he had gone with the procession or that he was present at the time of Lathi charge.

19. PW 2, Jiwan Bhengra was a reserved guard of Kazi Mohammadpur PS. He has claimed to be on duty on that date along with KD Singh (PW 11). He has deposed that at the house of Chotan Shukla when his dead body reached, there was large crowd. Appellant Anand Mohan and Lovely Anand came there and paid floral tribute to Chotan Shukla. After about 2- 2 ½ hours the procession started from the house of Chotan Shukla. Their vehicle also came behind the procession. It stopped near Bhagwanpur Chowk. There, one or two persons such as Appellants Lovely Anand and Anand Mohan gave speeches. The procession went towards Ramdayalu Nagar. At Khabra there was huge crowd. There he heard three sounds of firing and heard somebody ordering to assault a person by disclosing that he was collector of Gopalganj. He saw the dead body and thereafter Lathi charge took place. People of the procession started running hither thither. Those who were in the vehicles fled towards Ramdayalu Nagar. These vehicles were chased by the police force. 7 persons were caught ahead of Turki. They were taken to Hajipur. There he saw 15 other persons who

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had been apprehended. All came back at 9 pm to Muzaffarpur. He did not identify any of the accused persons and on this he was declared hostile.

20. PW 3, Ravindra Sharma, was Sub Inspector of Police at Mithanpura PS. He claims to be present on the date of occurrence in course of day time patrolling near the hospital at 10.30 am along with police Inspector BD Nigam (PW 6). The dead body was taken in a procession at about 11.30 am to the house of Chotan Shukla. It reached there at about 1.00 pm. There floral tributes were paid by Appellants Lovely Anand and Anand Mohan etc. The procession started from there at about 3.30 pm and stopped for sometime at Bhagwanpur Chowk. There it was addressed by Appellant Anand Mohan and some others in which it was stated that murder shall be avenged by murder. Utterances were also made against the administration. Then the procession started for Lalganj. He was on the Jeep in front of the procession followed by the vehicle carrying the dead body and that was followed by Contessa car of Appellants Lovely Anand and Anand Mohan which was followed by other vehicles. The procession reached near village Khabra at about 4.15 pm. From behind the procession sound of "Maro Maro" was heard. They went back to that place and saw the overturned car with yellow light. He saw a person fallen by the side

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of the road. Many persons were moving hither and thither and there was a commotion. Thousand of persons were present there. At this place Appellant Anand Mohan ordered Bhutkun to assault, upon which a young person aged about 25-26 years shot the fallen person. Thereafter on the orders of SDO there was a Lathi charge in which some people received injuries. Persons started running hither and thither and the people boarded the vehicles and fled towards Hajipur. On the damaged car there was a board of DM, Gopalganj. The injured was taken on a Gypsy to the hospital by Sub Inspector NP Dev (PW 9). He also participated in the chase and in the arrest of 7 persons at village Chandrahatti, who had injuries and also went to Hajipur and saw that 15 persons had been detained there including Appellants Anand Mohan and Lovely Anand. Those persons also had injuries. Along with the apprehended persons they came back to Muzaffarpur Sadar PS and then to Mithanpura PS. As per orders they brought Anand Mohan and Lovely Anand to Mithanpura police station. He claimed to identify Appellants Anand Mohan and Lovely Anand who on that date were represented by their counsel.

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21. Rest of the PWs in category I i.e. PWs 4 to 11 and 14 have also deposed generally in similar terms as PWs 1 and 3 but what is of relevance and use is some subtle differences with regard

to the manner of actual occurrence of exhortation and assault including shooting on the deceased. Before dealing with such differences it is useful to notice at one place the order of vehicles in the procession including that of the concerned PWs of category I and II. According to the prosecution evidence, PW 6, BD Nigam who was then officer incharge of Mithanpura police station was at the head of the procession in his vehicle along with police force and sub inspector of Police Ravindra Sharma (PW 3). This vehicle was followed by an open vehicle carrying dead bodies. Behind this was a white Contessa car of appellants Anand Mohan and Lovely Anand with their driver and bodyguard. Next was an ambassador car with appellant Prof. Arun Kumar Singh and others. There is no specific evidence as to in which vehicle and in which part of the procession the other appellants were proceeding. However, it has come in the evidence that there were 30-35 other vehicles including some buses in which people were traveling with the procession. Towards rear of the procession was a police Jeep with armed police party and ASI of Police, S.N.Singh (not examined). Behind that was vehicle of PW 4, ASI Amarnath Prasad in which was also seated PW 20, Awadhesh Mishra along with armed force. This was followed by vehicles of SDO (East) Tara Razak, PW 12, Deputy Superintendent of Police, Mohan Razak, PW 14 (informant), SDO (West), BP

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Singh, PW 13, Inspector of Police, BP Choudhary (not examined), Officer Incharge of Kazi Mohammadpur PS KD Singh (PW 11) and Officer Inchrge of Ahiyapur PS, Gaya Prasad Choubey (PW 5).

22. PW 4, ASI Amarnath Prasad, as noticed earlier was at the rear of the procession in the same vehicle with PW 20, Awadhesh Mishra, the Executive Magistrate. On hearing the sound of "Maro Maro", he along with the SDO and others reached the place of occurrence where an Ambassador car was lying in overturned condition and the injured was lying down. He claims to have heard appellants Anand Mohan, Lovely Anand and Akhlaque Ahmad instigating the crowd and on the orders of Anand Mohan firing was made by a boy aged about 25-30 years causing serious injuries to the fallen person. He claimed to identify those three as well as Vijay Kumar Shukla @ Munna Shukla and Lalan Shukla. In paragraph 45 of his deposition PW 4 has given a different version than the other witnesses such as PW 1, 3, 5 and 6. He has replied that after Bhagwanpur Chowk when the procession started it included persons on foot also. This is clearly not acceptable because according to other witnesses the procession covered a few kilometer from Bhagwanpur Chowk on vehicles which covered approximately 3-4 kms on highway in 15 minutes time. People on foot could not have accompanied the procession on the highway by moving with

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the speed of motor vehicles. In paragraph 48 he has made a categorical reply that he heard only one sound of firing. According to him, the firing was made from a distance of 2-3 cubic i.e. 3-4 feet.

23. PW 5, Sub Inspector Gaya Prasad Choubey was also at the rear of the procession along with Officer Incharge of Ahiyapur PS, Nagendra Prasad Dev, PW 9. According to him, shouting of "Maro Maro" was heard from near the middle part of the procession and on this, all the vehicles stopped. While he was running towards the place of occurrence he heard 3-4 sounds of firing. He did not hear any one exhorting the crowd or Bhutkun Shukla. He named five of the appellants as the persons whom he identified when there was lathi charge and they were moving away on their vehicles. He has claimed that he along with PW 9 and PW 10 carried the injured District Magistrate on a Gypsy to Sri Krishna Medical College Hospital where the injured died in course of treatment. He has deposed that the procession was moving peacefully. He has replied that as soon as he came down from the Jeep he heard the sound of firing within a minute or so. Lathi charge was made within 5-10 minutes of shooting on the orders of SDO (East), PW 12. He denied to have given any information to the police station after reaching the Hospital.

24. PW 6, BD Nigam was Officer Incharge of

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Mithanpura PS at the relevant time. He along with PW 3 was in front of the procession in his vehicle. Contrary to PW 3 who had claimed that on hearing the sound of "Maro Maro" they had turned their Jeep and gone towards the place of occurrence on the vehicle, this witness has claimed to have run with PW 3 towards the place of occurrence. According to him, he heard appellants Anand Mohan and Lovely Anand exhorting the crowd and Bhutkun on which three shots were fired by a tall and fair complexioned person aged about 25-26 years. He claimed to identify appellants Anand Mohan, Lovely Anand, Prof Arun Kumar Sinha, Harendra Kumar and others after the lathi charge when there was lot of commotion. He has categorically stated that from Bhagwanpur the procession started only on vehicles. He has denied that there was any breach of peace or any apprehension of such breach till the procession had reached the place of occurrence. He has replied in paragraph 24 that it took him about 5 minutes to run and reach at the place of occurrence and by that time SDO (East), PW 20 and the police force had already reached there. In paragraph 32 he admitted that in his statement to the investigating officer he had named seven persons as instigators and assailants of the deceased. He has also admitted that except the assault on the deceased District Magistrate no untoward occurrence took place in course of the procession and there was no misbehavior

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with him or the other persons of the administration. He has also admitted that at Bhagwanpur Chowk the dead body was not brought down on the ground and no mikes were used. He has stated in paragraph 17 that after lathi charge there was commotion and processionists fled on their vehicles and some people were fleeing on foot also.

25. PW 7, K.N.Choudhary was Officer Incharge of Sadar Police Station at the relevant time where the FIR of this case was ultimately lodged. He was also at the rear of the procession. He claims to have heard appellants Anand Mohan, Lovely Anand, Prof Arun Kumar and Akhlaque Ahmad exhorting Bhutkun to assault the deceased He claims to have identified those four only amongst the persons present in the crowd. According to him, the bodyguard and the driver of the injured District Magistrate were present near the injured. He has given the distance of Khabra village from Bhagwanpur one km whereas PW 6 has claimed it to be four kms. According to him, most of the processionists were on the vehicle but some were on foot also. According to his reply in paragraph 61, 10-15 officials were present at the time of firing and they included SDO (East), SDO (West) and other witnesses. The armed force as well as lathi force were also present there but nobody took any action against the person who fired at the deceased. He has admitted that

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his Jeep was fitted with a wireless set and information by wireless set was sent by SDO Mobile to police information room, Muzaffarpur. He has given an explanation that although he saw a cognizable offence being committed but he did not record any case because some superior police officials were also present. He has, though admitted in paragraph 81 that it remained his legal responsibility. He has also admitted that the procession was not declared illegal in spite of provocative speeches and such speeches did not affect anyone and there was no misbehaviour by anyone. He has proved the forwarding reports in respect of treatment of injuries of six accused persons as exhibits 1 to 1/5. He has also proved Sadar PS station diary entry no.144 dated 5.12.1994 recorded at 17.15 hours as exhibit A/4, station diary entries no.124 to 153 of the same date as exhibits B to B/25 and station diary entry no.149 dated 5.12.1994 recorded at 22.10 hours as exhibit A/6. He has also proved the seizure list of vehicle and a revolver with ammunition at Hajipur as exhibit C and C/1. A station diary entry bearing no.161 has been proved as exhibit A/7. He has admitted that in his endorsement on the written report of the occurrence he has given only the date and not the time and in the relevant column of the FIR he has not mentioned the date and time of sending it to the court. He has denied that this was to cover ante dating of the FIR

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26. PW 8, Jai Prakash Narain, was ASI of Police Sadar PS at the relevant time. He was also at the rear of the procession along with PW 7 and 12. He claims to have heard appellants Anand Mohan, Lovely Anand and Prof. Arun Kumar Singh loudly exhorting Bhutkun to commit the assault. He also claimed to identify 5-6 including appellants Akhlaque Ahmad, Shashi Shekhar Thakur, Ramesh Thakur, Yogendra Kumar and Munna Kapar as the assailants. In his cross-examination in paragraph 36 he has replied that it took him 7-8 minutes to reach at the place of occurrence. In paragraph 39, he has replied that he saw the injured DM lying down and there was bleeding injury on his head. According to him, all the three shots were fired from a distance of 2-3 feet and at that time the assailant Bhutkun Shukla was standing. In paragraph 71 he has replied that on going back from Hajipur to Sadar PS, 8-10 police officers had assembled at Sadar police station and they discussed regarding the present case. He was there till 12.00 o'clock in the night. He has claimed that nothing was written in his presence but the FIR was lodged before him which he did not read. He claims to have read the FIR on the next day in the morning when he went after 12.00 in the noon. He has admitted that he made no efforts to apprehend Bhutkun Shukla at the place of occurrence or even thereafter. No chase was made of

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Bhutkun to Lalganj and no effort was made to arrest him at Lalganj. However, he has claimed to have given verbal orders for arrest of Bhutkun Shukla.

27. PW 9, Nagendra Prasad Dev, was Officer Incharge of Ahiyapur PS at the relevant time. He was at the rear of the procession along with PW 5, Gaya Prasad. According to him, only Anand Mohan exhorted to assault the injured District Magistrate. He claimed to identify 9 persons including six other appellants when they were going away on their vehicles after the lathi charge. He prepared the inquest report of the deceased at 6.15 pm on the date of occurrence. It has been marked as exhibit 5. Although in examination-in-chief he claimed to have heard the exhortation and seen the firing at the deceased but in paragraph 25 he has replied that he could not hear what were being spoken by appellants Anand Mohan and Lovely Anand and he did not see anyone firing but only heard a sound of firing. According to him, even at the time of lathi charge traffic movement was normal from both the sides. However, on this point several other witnesses have given contradictory statements. In paragraph 55 he has identified his signature on Ahiyapur station diary entry no.106 dated 5.12.194 and in paragraph 56 he has admitted that in the said station diary entry he had recorded that when he reached at the place of occurrence then he

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found an injured person fallen down and lathi charge was going on due to which people fled away.

28. PW 10, Raja Ram, was ASI of Police in the Town PS and on the date of occurrence he was with PW 14, the Deputy Superintendent of Police, Mohan Razak. According to him also, the noise of "Maro Maro" emanated somewhere from the middle of the procession. He reached the place of occurrence along with PW 14 and armed force. According to him, only appellant Anand Mohan exhorted Bhutkun leading to firing of three shots on the injured DM. This was followed by lathi charge. Amongst the persons who fled from the place of occurrence, he allegedly identified appellants Anand Mohan, Lovely Anand, Akhlaque Ahmad and Prof Arun Kumar. The injured DM was carried to hospital by PW 5 and PW 9 where he died in course of treatment. This witness also went with the injured to the hospital. He did not see the bodyguard and the driver of the deceased DM at the place of occurrence nor any other injured except the DM was taken to hospital. He admitted that he became free from hospital around 5 pm and came back to the police station by 7 pm but did not report the occurrence to the Police Station. From his reply in paragraph 30 it transpires that at the time of occurrence when they ran on hearing the noise, there was a traffic Jam and some vehicles in front of the vehicle of the deceased DM

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had also stopped on account of such Jam. In paragraph 31 he has replied that vehicles in the procession remained standing in a queue. According to him, the occurrence took place about 25 meters from end of the procession from where he ran along with PW 14. There were about 150 persons amongst the crowd at the place of occurrence and shooting had taken place when this witness was at a distance of 8-9 meters from the place of occurrence. In paragraph 49 he admitted that according to station diary entry of 5.12.1994 he was posted on law and order duty in his own sector and came back at 9 pm . In paragraph 65 he first replied that at the place of occurrence there were 150 persons belonging to village Khabra but later he claimed that he had seen only the processionists and not persons from that village.

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29. PW 11, Kumar Devendra Singh was, at the relevant time, Officer Incharge of Kazi Mohammadpur police station. He was also at the rear of the procession. He has made a significant departure from usual statements of other witnesses. He claimed that on reaching the place of occurrence he saw that a person had fallen down near the overturned car and he was being assaulted by people with legs and shoes. He also claimed that he saw appellants Anand Mohan, Lovely Anand, Akhlaque Ahmad etc. exhorting the crowd to assault. In the meantime Bhutkun Shukla

came out of the crowd and fired several rounds on the District Magistrate. This was followed by lathi charge on the orders of the Magistrate. According to him, mike was used for speeches at Bhagwanpur Chowk and he heard the speeches from a distance because there was mike. He has also introduced in paragraph 14 a different version that the shouting was heard coming from the front of the procession. However, in paragraphs 6 and 16 he has claimed that the crowd was in the middle and the Ambassador car of the DM was also in the middle of the procession. He has claimed that he was with Sub Divisional Officer who issued orders on the wireless set to chase the processionists. He was with the SDO till 12.00 in the night and during this time he had gone to Gorol and Hajipur and came back to Muzaffarpur with the arrested accused persons. He had signed on a seizure list showing seizure of revolver and ammunition from a police bodyguard. In paragraph 38 he has replied that he came back to Sadar Police Station at about 2.00 in the night along with District Magistrate, Superintendent of Police, Sub Divisional Officer, Deputy Superintendent of Police and other officials including PW 14, Mohan Razak and BD Nigam, PW 6. In paragraph 39 he has stated that Officer Incharge K.N. Choudhary (PW 7) also returned with him and at that time written work with regard to case was being done. In paragraph 42 he has denounced

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his earlier statement that he saw the DM being assaulted with legs and shoes. He claimed that he saw such assault from a distance of about 100 yards.

30. PW 14, Mohan Rajak is the informant of this case and the last witness among the category I consisting of police witnesses who claimed to have seen the occurrence. At the relevant time he was Deputy Superintendent of Police, Muzaffarpur East. He has alleged that noise of "Maro Maro" was being raised by appellant Anand Mohan, Lovely Anand and their supporters and on exhortation of Anand Mohan a young person fired three rounds. This was followed by lathi charge. He claims to have arrested some persons at Chandrahatti and he also went to Hajipur Circuit House where Hajipur Police had already apprehended appellants Anand Mohan, Lovely Anand and their associates and kept them in Hajipur Circuit House. He claims to have come back to Muzaffarpur Sadar PS and lodged the case through a written/ typed report. He has proved his signature on written/ typed report as exhibit 6. He expressed his inability to disclose the name of the typist. He claimed to identify appellants Anand Mohan, Lovely Anand and Arun Kumar Singh. He has admitted that he was at the rear of the procession when it started from Bhagwanpur Chowk. He had denied that the road was jammed but then clarified that only small

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vehicles could go and big vehicles were jammed. In paragraph 24 he has stated that the speed of the vehicles was faster than the speed of buses. In paragraph 26 he has replied in cross-examination that he did not hear any voices at the place of occurrence. The procession continued to proceed from the place of occurrence and when he at the rear of the procession reached near the white car then he saw a person fallen down. In paragraph 29 he has stated that before his reaching the place of occurrence there was already a crowd assembled there. According to him, the crowd was of processionists. In paragraph 30 he has replied that from Bhagwanpur Chowk onwards there was no member of the process traveling on foot and the crowd which was already there had not been seen by him coming down from any vehicle. He could not say as to by which bus truck or vehicle persons of the crowd had come. He also claimed to have seen brick bats and stones near the injured person. In paragraph 44 he has replied that in spite of aggressive speeches at Bhagwanpur no prohibitory action was taken because the situation was normal. In paragraph 45 he has claimed that he reached the place of occurrence along with PW 11, KD Singh and PW 12 Tara Razak at the same time. In paragraph 46 he has stated that on reaching there he saw a person fallen on the ground near the overturned car and that person was being assaulted by 15 to 20

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persons with lathi, danda, slaps, fists and bricks. Most of the witnesses have not made such a claim nor such allegation of assault finds support from the postmortem report which discloses only three firearm injuries on the head and face of the deceased.

31. Further PW 14 has claimed in paragraph 50 that he informed the Superintendent of Police about the occurrence within 10 minutes and thereafter he received information to proceed towards Hajipur. In paragraph 53 he has admitted that the destination of the funeral procession was Lalganj but still he along with other police officers did not go towards Lalganj and instead went to Hajipur. He has explained the delay in not reporting the matter to the police station by stating that since the Officer Incharge was with him, therefore, no entry was made at the police station. In paragraph 61, he has contradicted PW 11 and has claimed that along with other officials he left Hajipur Circuit House for Muzaffarpur at about 7 pm. He has given the distance of Hajipur to Muzaffarpur as 50 kms and has replied in paragraph 64 that on coming back to Muzaffarpur Sadar Police Station half an hour was consumed in holding discussion with Superintendent of Police, District Magistrate and others. In paragraph 71 he has again replied that he got the FIR instituted after taking help from all the officials present there. He claimed that he lodged the FIR after taking statement of

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4-5 officials. Recording of such statement took about half an hour and typing of the FIR also took about one hour. He has replied that if the typed report of four pages will be written with hand it will cover about 15 pages which will take about 3-4 hours time in writing. He denied the suggestion that earlier recorded fardbeyan was torn and the present written report was prepared after holding consultation for the whole night. He denied to have heard that the Chief Minister came to the Circuit House at that night. He has admitted that on the formal FIR there is no mention of the date when it was sent to the court. On looking at the station diary entry of 5.12.1994 of Sadar PS he replied that brief description of the occurrence was not entered in the station diary. In paragraph 89 he has replied that he met the Superintendent of Police and the District Magistrate of Muzaffarpur at Hajipur at 7.30 – 8.00 pm. This creates a serious doubt about his claim that he left Hajipur for Muzaffarpur along with all officials at 7.00 pm.

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32. As noticed earlier, the second category of witnesses consists of civil officials i.e. PW 12, PW 13, PW 20 and other eye witnesses i.e. PW 17 and PW 21. All of them have claimed to be at the place of occurrence. PW 12, Tara Rajak, was with the procession in the capacity of Sub Divisional Officer, Muzaffarpur East, just behind PW 14, the informant. He has

claimed that appellants Anand Moan and Lovely Anand addressed the procession at Bhagwanpur Chowk. On hearing the sound of "Maro Maro" near Khabra village he ran to the place of occurrence along with Sub Divisional Officer West, PW 13. He claims to have reached the place of occurrence within 2-3 minutes but while he was still running he heard the sound of firing. On reaching near the overturned car he saw the injured person lying in injured condition. According to him, 7 persons traveling in an Ambassador car who had led the procession were arrested at village Chandrahatti and he took them to Gorul PS. From there a wireless message was sent to Hajipur Control Room to arrest the fleeing processionists after intimating the District Magistrate. He gave his location to the District Magistrate Muzaffarpur on wireless and was asked to remain at Gorul PS. The District Magistrate, Muzaffarpur came to Gorul PS and along with this witness and other police officials he proceeded to Hajipur where 22 persons who had led the procession were arrested and brought to Muzaffarpur. Their vehicles were seized. On the point of identification he was doubtful and explained that it was because of passage of time. In paragraph 20 he has replied that from the place of occurrence itself wireless information was given to the District Magistrate, Muzaffarpur regarding occurrence. In paragraph 22 he has replied that after stoppage at

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Bhagwanpur on verbal orders traffic from both ends of the national highway had been stopped. In paragraph 23 he has replied that the number of persons present at the place of occurrence was about 5000. According to him, after the occurrence some persons proceeded on vehicles and some persons fled on foot towards Khabra village. No attempt was made to arrest persons fleeing towards Khabra village as they included some casual inquisitive observers. In paragraph 42 he has replied that from Bhagwanpur Chowk the procession left on vehicles. Some were on motorcycles. He did not see anybody going on foot. Nobody was on foot in the procession when it reached village Khabra. The vehicles remained in the same order in which they had left Bhagwanpur Chowk. In paragraph 44 he has replied that at village Khabra a crowd of about 2000 local persons had assembled. The length of the procession was about ½ kms. According to him, his vehicle at the rear of the procession was about 300 meters from the place of occurrence. At that place the nearest vehicles of the procession were buses and there were more than 10 vehicles in front of the procession. In paragraph 50 he has replied that when he reached the place of occurrence no vehicles were moving from towards Hajipur. He did not see any person in the overturned vehicle and he saw nobody injured besides the District Magistrate. On enquiry he learnt that

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driver, bodyguard and a photographer were also with the injured District Magistrate, In paragraph 61 he has admitted that in his wireless message to the District Magistrate from the place of occurrence he had simply reported that after causing injuries to the District Magistrate the assailants had fled towards Hajipur. In paragraph 64 he has replied that he came to know at the place of occurrence itself that Bhutkun Shukla had fired shots. In paragraph 73 he admitted that there was no explanation why he did not lodge information at Gorul PS in respect of the alleged occurrence. In paragraph 75 he has stated that they left Gorul PS at 7.30 pm after waiting for the District Magistrate and reached Hajipur at about 8.00 pm. He claims to have left Hajipur for Muzaffarpur at about 9.00 pm. At the end of his cross-examination this witness was declared hostile only to enable him to add some facts to his deposition in chief.

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33. PW 13, Basudev Prasad Singh, as noticed earlier, was in the procession as Sub Divisional Officer, Sadar West, along with PW 12 at the rear of the procession. According to him, appellants Anand Mohan, Lovely Anand and Prof. Arun Kumar Singh gave speeches at Bhagwanpur Chowk. On hearing sound of “Maro Maro” the vehicles slowed down and ultimately stopped. He along with PW 12, PW 14 and other officials and armed force ran

towards the place of occurrence and in the meantime sound of firing was heard. When they reached near the place of occurrence they found that the mob was out of control and besides the overturned car a person soaked in blood had fallen down. Lathi charge was ordered by the Sub Divisional Officer, East and the injured was sent with police officials to hospital. He went with PW 12 upto Gorul police station. After some time the District Magistrate, Muzaffarpur came to Gorul and then proceeded to Hajipur he was sent back to Muzaffarpur. He claimed to identify appellants, Anand Mohan, Lovely Anand, Akhlaque Ahmad and Prof. Arun Kumar Singh in the occurrence. In paragraphs 42 and 43 he has replied that when the procession stopped near village Khabra at that time behind the procession besides him only ASI of Sadar PS SN Singh (not examined), Awadhesh Mishra (PW 20), Amarnath Das (Prasad) (PW 4), Mohan Rajak (PW 14) and Tara Rajak (PW 12) were present besides the lathi and armed force. No other official was present towards rear. His such categorical reply creates a doubt regarding claim of many police witnesses of category I such as PWs 1,2,5,7,8,9,10 and 11 regarding their presence at the time and place of occurrence.

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34. PW 13 has further replied in paragraph 43 that near Khabra village also a procession had jammed the road and as a

result vehicles were not going to and fro. In paragraph 44 he claimed that he reached the place of occurrence after crossing 25-30 vehicles and only 3-4 vehicles were in front of the procession from that place. But in paragraph 45 he has admitted that in his earlier statement to police he had stated that on reaching near Khabra village the sound of "Maro Maro" was heard from near middle of the procession. In paragraph 56 he has admitted that information of the occurrence was given by them to different police stations before they proceeded from the place of occurrence. In paragraph 57 he has admitted that when the District Magistrate reached Gorul police station he was given all the details by the officials. The informant was also present there. From there this witness received orders to come back to Muzaffarpur. According to him, the entire actions were being taken under the supervision of the District Magistrate. In paragraph 59 he has admitted that only when the District Magistrate returned, he, the Sub Divisional Officer, East and Deputy Superintendent of Police, East submitted a joint report to the District Magistrate but the witness refused to recollect the time of submission of such report. He also could not recollect when he returned from Gorul and when the District Magistrate and others returned to Muzaffarpur. He claimed to know appellant Anand Mohan and Lovely Anand because they were MLA and MP

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respectively. He admitted that he did not know Prof Arun Kumar and his name was disclosed to him by others.

35. PW 20, Awadhesh Mishra had accompanied the procession in the capacity of an Executive Magistrate along with police force. He was with the procession at the rear. At Bhagwanpur Chowk he came to know from others that some speeches were made. Some noise was heard near Khabra village. When he reached at the place of occurrence he saw the overturned Ambassador car and injured District Magistrate of Gopalganj who was kept in a Gypsy for being taken to hospital. Thereafter the vehicles of the procession moved forward. They chased 6 or 7 persons and arrested them near Gorul Police station. He also went with the District Magistrate, Muzaffarpur to Hajipur. There some persons were arrested. Out of them he could see appellants Anand Mohan, Lovely Anand in a room. His vehicle was before that of the informant PW 14. According to him, the procession was more than ½ km and slightly less than 1 km in length. In paragraph 23 he expressed his inability to disclose the time when he reached Gorul Police Station or Hajipur.

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36. PW 17, Dipak Kumar, was the driver of the deceased District Magistrate at the relevant time. According to him, the District Magistrate, Gopalganj (deceased) left Hajipur at about 3

pm on 5.12.1994 along with his bodyguard and a photographer. At about 4.30 pm they came near Khabra village. A funeral procession was coming from Muzaffarpur side. The dead body was on a vehicle decorated with flower. Behind that there were several other vehicles. Some people were on foot also. He was taking away his car from the left side and on this people surrounded the vehicle. There was shout of "Maro Maro". The bodyguard D.N.Hembram (PW 21) was pulled out of the vehicle and assaulted. The witness tried to speed away the vehicle He was also pulled out of the vehicle and also the District Magistrate. Both were assaulted. The witness ran away and hid behind a vehicle. He returned after 5-7 minutes but found that the procession was not there. He found police present there. The District Magistrate was lying injured by the side of the road and the car was overturned. The District Magistrate was taken to hospital by a police vehicle. He also claims to have gone to hospital by the same vehicle and learnt after some time that the District Magistrate had died. He did not see any police vehicle in front of the procession. According to him, besides the vehicles forming a long procession some people were present on foot. He has denied to have seen the actual assault or to have heard anything including sound of firing. He claims that he and others went to Sadar Police Station and then to hospital.

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37. PW 21, as noticed earlier, was the bodyguard of the District Magistrate, Gopalganj (deceased). Like the driver he has deposed that when car was attempted to be taken out of the crowd from left. Then there was sound of "Maro Maro". He was pulled out and assaulted. The driver was also assaulted. The District Magistrate was also assaulted and the car was overturned. He claims to have received injuries. The car was damaged, its glasses were broken after some time police arrived and then there was commotion. Police took the DM to hospital. He was also treated there. There he learnt that the District Magistrate had died. He claimed that his injuries were examined at the hospital and he had received injuries with stick as well as fists and slaps. However, the injury reports of either the driver or this witness have not been brought on record. This witness has not claimed that he ran away from the place of occurrence. According to his replies in paragraph 12 the driver raised hulla that the District Magistrate had fallen down and then patrolling party from the rear came and picked him up.

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38. The third category of witnesses are three doctors, PWs 15, 16 and 23, the two employees of Forensic Science Laboratory, Patna, PWs 18 and 19 and three police officers who were associated with the investigation of the case i.e. PWs 22, 24

and 25.

39. PW 15, Dr Naresh Kumar has proved exhibit 7 series which are injury reports of six persons including some minor injuries of appellant Akhlaque Ahmad caused by hard and blunt substance. These injury reports are shown to have been prepared on 6.12.1994 between 12.35 am to 12.43 am. According to the prosecution, these injureds had received injuries in course of lathi charge at the place of occurrence and, therefore, their participation in the occurrence is proved. However, only one of the said injureds appellant Akhlaque Ahmad has been convicted by the trial court.

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40. PW 16, Dr Mumtaz Ahmad conducted the autopsy on the dead body of Sri G.Krishnayya, District Magistrate, Gopalganj on 5.12.1994 at 7.40 pm. He found the following ante mortem injuries on his person-

(i) (a) One oval wound 1/3" in diameter with inverted margin and burning of the area on lateral side of the left eyebrow ;

(b) Lacerated injury internal cavity deep with averted margin was found on central part of forehead just above eyebrow 3'x1.2'x internal cavity from which fracture piece of frontal bone and brain material was protruding out. On dissection the two wounds were found interconnected.

(ii) One oval wound ¼" in diameter with inverted margin was found on left cheek.

On dissection Maxilla and Mandible were found fractured and tongue and inner part of lower lip was found lacerated. The projectile after entering the left cheek and damaging above organs had passed away from oral cavity.

(iii) (a) One oval wound with inverted margin with singeing and burning of the margin ¼" in diameter was found on right parietal region of head ;

(b) One oval wound 1.3"x1/2" x internal cavity deep with averted margin was found on left parietal region of head.

On dissection the two wounds were found interconnected with fracture of skull bone into so many pieces and laceration of brain tissues.

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In the opinion of the doctor death was due to above injuries caused by some firearm and the time elapsed since death was within four hours. The injuries were sufficient to cause death in ordinary course of nature. The postmortem report was marked as exhibit 8. In cross-examination this witness stated in paragraph 12 that Chief Minister Laloo Prasad Yadav arrived in the hospital after stitching of the wound and lapse of about one hour. The doctor has deposed that there were three entry wounds, two on the left and one on the right side of the body. The two wounds on left side differ in diameter in dimension. The second entry wound ¼" in diameter was with burn injury. This indicates that either two weapons were used or one weapon with different range was used. Injury no.(i) was

caused within six inches from the body and the injury no.(ii) was caused from a range more than 18 inches. The doctor found no other injury on the person of the deceased except the three firearm injuries. Those injuries were sufficient to cause instant and immediate death. The singeing and burning margin in injury no.(iii) indicated that the shot was fired within 6 to 12 inches.

41. PW 23, Dr Nagendra Prasad Sinha, has proved an injury report of Sri P.L.Tangri, a photographer of Gopalganj as exhibit 7/6. He examined the said injured as surgical indoor patient at 5.40 pm. He found four different size of lacerations on the left side skull with bleeding from margin and half inch apart from each other. The time of injuries was within six hours and they were simple in nature caused by hard and blunt substance. The doctor has replied in cross-examination that the injuries were caused by broken bricks and may be due to fall on hard and blunt object. The victim had came to the hospital himself without any requisition. He has deposed that no other victim or dead body was brought in the hospital by that time. This doctor was in the emergency ward on that date from 1 pm to 9 pm. According to him, the dead body of DM, Gopalganj was not brought during that period.

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42. PW 18, Umesh Kumar Sinha, Incharge Director, Forensic Science Laboratory, Patna and PW 19, Jawahar Prasad

Singh, an employee of the aforesaid Forensic Science Laboratory have claimed to be members of a team constituted by the Director which went to inspect the place of occurrence. They could collect some blood stained earth and pieces of glass. They went to the Sadar PS and also collected some broken glasses of the car of the District Magistrate. PW 18 has claimed that the collected articles were handed over to Dhiraj Kumar, DSP (PW 24). In proof of collection of those articles one Sheo Lakhan Singh, another member of the team, prepared a paper bearing signature of PWs 18 and 19 which has been proved by PW 18 as exhibit 9. PW 18 has admitted that they had no means to ensure that no tampering had been done at the place of occurrence and they could not rule out the possibility of collected articles being dropped at the place of occurrence after the occurrence had taken place. The evidence of PWs 18 and 19 is not of much significance.

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43. PW 22, Gupteshwar Singh was at the relevant time an Assistant Sub Inspector of Police posted at Muzaffarpur. He claims to have participated in investigation of the case from 14.12.1994 to 16.12.1994. During that period he had attempted to execute a warrant of arrest against one accused Rakesh Kumar and had requisitioned injury report of P.M.Tangri, a photographer. He has proved the said requisition as exhibit 1/6.

44. PW 24 is the second and the main Investigating Officer of this case. At the relevant time he was posted as Deputy Superintendent of Police in Muzaffarpur town. He claims to have taken over charge of investigation on 6.12.1994 from Additional Superintendent of Police C.P.Kiran (PW 25). Since PW 25 was the first Investigating Officer hence it will be convenient to analyze his deposition first. At the relevant time PW 25 was Additional Superintendent of Police, West Muzaffarpur. He claims to have received an order dated 5.12.1994 from Superintendent of Police, Muzaffarpur entrusting him with the duty to investigate the present case. He claims to have gone to Sadar Police Station on 5.12.1994 and taken up the investigation of the case after perusing the formal FIR and Fardbeyan at the Sadar PS. He claims to have recorded further statement of informant, Mohan Rajak on 6.12.1994 at 1.00 am and with him he claims to have inspected the place of occurrence in the night itself with the help of torch and petromax. His findings at the place of occurrence have already been noticed earlier in paragraph 5 of this judgment. He has proved the sketch map of the place of occurrence as exhibit 11 and seizure list of articles as exhibit 12. He claimed that he handed over the investigation of the case to Dhiraj Kumar PW 24 on 6.12.1994 at 8.15 am. He has admitted that initially the investigation of the case was given to PW

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24 but since he was on leave, therefore, on the orders of the Superintendent of Police he conducted the investigation till Dhiraj Kumar reported back on duty and took over charge of the investigation. He has further admitted that the jurisdiction over the place of occurrence was that of Dhiraj Kumar. He has further admitted that he had gone to hospital and had seen the deceased District Magistrate before taking over charge of investigation. He admitted in paragraph 8 that he did not find any bullet at the place of occurrence nor he enquired at the hospital whether any shot was recovered from the body of the deceased. He also admitted that he did not obtain any papers to show in which ward of the hospital the deceased was kept and whether any doctor had treated him or not. He admitted that he had not received any prescription or bed head ticket. He further admitted that the bodyguard of accused Anand Mohan, who was with him for the purpose of security, was not facing trial in the case which, in other words, meant that he has been exonerated. He denied to have any knowledge as to when the deceased District Magistrate died. In paragraph 46 he has claimed that during investigation he could not meet any of the accused persons and, therefore, he did not write for injury report of the accused persons nor he recorded their statements. He further admitted that in the case diary he had not mentioned as to when and

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at what place the accused persons were arrested. He claims to have no knowledge as to when the accused persons came from Hajipur to Muzaffarpur. According to him when he took up investigation, the accused persons were not in the police station nor they were in the police station when he handed over charge of investigation to the other IO. He admitted that in the FIR the number of arrested persons who were brought to the police station is mentioned as 15.

45. PW 24, Dhiraj Kumar, has claimed to have taken over charge of investigation on 6.12.1994 and after recording statement of witnesses and completing investigation he submitted charge sheet. He claims to have recorded the statement of arrested accused persons on 6.12.1994 and then forwarded them to court of CJM, Muzaffarpur for remand. He has proved a chargesheet submitted in this case as exhibit 10 and a material exhibit, the ammunition seized from the bodyguard of the deceased District Magistrate as material exhibit I. In cross-examination he has replied that the informant is also of his rank but senior to him and the accused persons are leaders of political parties but he could not say whether they were of the opposition parties. However, he has later stated that appellants Anand Mohan, Lovely Anand etc. at the relevant time were not the leaders of the ruling party and they were working to change the ruling group. At that time the Chief Minister

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of Bihar was Laloo Prasad Yadav. He has denied the suggestion that a senior officer C.P.Kiran was changed from working as the Investigating Officer because he was not under any political prejudice or that this witness submitted chargesheet after wrong investigation under political pressure. He denied to have examined any doctor who might have treated the deceased in the hospital or to have collected any papers relating to his treatment. He admitted that Chotan Shukla was an important personality of Muzaffarpur town and on account of his murder there was popular resentment at Muzaffarpur. He also admitted that there was no mention in the case diary that any mike or loudspeaker was used at Bhagwanpur Chowk. He denied the suggestion that FIR was not recoded on the basis of statements of the driver, the bodyguard or the photographer who were traveling with the deceased District Magistrate because they did not support the allegation of firing nor named any persons. He has also admitted in paragraph 46, after looking into the station diary entries of Sadar PS Hajipur, that as per station diary entry no.105 dated 6.12.1994 at 1.30 am or 2.30 am it is entered by Officer Incharge of the said PS that he along with some other police officers came to the police station and recorded that appellants Lovely Anand, Anand Mohan and 13 other persons who had been kept seated in the Circuit House were questioned by police officers

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of Muzaffarpur and taken away by them. In paragraph 150 he has replied that he could not explain how in the FIR recorded on 5.12.1994 at 10.10 pm the arrested accused persons could be shown to have been brought to Muzaffarpur at about 10 pm when as per station diary of Sadar PS, Hajipur it is mentioned that accused persons were sent from Hajipur to Muzaffarpur at 2.30 am in the night. He also admitted that he did not investigate how the informant, Mohan Rajak could reach Muzaffarpur at 10.00 in the night when at that time he was shown to be at Hajipur. In paragraph 167 he has admitted that according to the seizure list showing seizure of service revolver of bodyguard Balakant it was prepared on 5.12.1994 at 8.30 pm and another seizure list showing seizure of a vehicle at Ramashish Chowk (Hajipur) the seizure was effected at 5.12.1994 at 8.50 pm he could not explain how the case number was mentioned on both the aforesaid seizure lists but denied a suggestion that the seizure lists and FIR have been ante dated to implicate accused persons falsely.

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46. After noticing the relevant materials and gist of deposition of relevant witnesses it would be appropriate to deal with the specific submissions advanced on behalf of the appellants and the prosecution. As noticed earlier, the defence has made a serious challenge to the presence of such a large number of police witnesses

at the place of occurrence, the truthfulness and time of the FIR and the manner of the alleged occurrence. The evidence on record as noticed earlier shows that a large funeral procession left the house of Chotan Shukla along with his dead body and at Bhagwanpur Chowk some persons made speeches including appellants Anand Mohan and Lovely Anand. The police witnesses of category I have admitted that the said speeches did not have any effect and the procession proceeded from Bhagwanpur Chowk in an orderly manner on vehicles which were speeding away towards Lalganj so that the funeral could take place. The speeches at Bhagwanpur were not audible to the witnesses of category II which was natural because no loudspeaker or mike was used there. In view of such facts there is no difficulty in holding that speeches by political leaders were made for political purposes and there is no reliable material to hold that the speeches led to any unlawful assembly.

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47. When the motorcade carrying the processionists was passing through village Khabra, as per evidence of the witnesses noise of “Maro Maro” was heard when about half the procession had crossed the place of occurrence. The length of the procession, according to majority of the witnesses was more than ½ kilometer and less than 1 kilometer. PW 12, the Sub Divisional Officer, Muzaffarpur East estimated the length of the procession to

be about ½ kilometer and his vehicle at the rear of the procession was about 300 meter from the place of occurrence. PW 20, the Executive Magistrate has estimated the length of the procession to be more than ½ kilometer and slightly less than 1 kilometer. As admitted by most of the witnesses the sound of "Maro Maro" was heard when the procession moving on vehicles was still moving and such sound came from an area near the middle portion of the procession. Upon hearing such sound the vehicles stopped and then the witnesses rushed to the place of occurrence. It is admitted position that the car carrying appellants Anand Mohan and Lovely Anand was second vehicle of the procession just behind the open vehicle carrying the dead bodies. In the situation of a big commotion and melee when according to evidence on record there was brick batting by the mob present by the side of the road on the car of the District Magistrate and on some of the occupants it would have taken sometime even for the persons occupying the vehicles in the procession to get down from their vehicles and find out the place where the occurrence took place. By that time the prosecution witnesses specially the Magistrates and the police personnels were bound to reach the place of occurrence. No doubt, the mob which surrounded the car of the District Magistrate, Gopalganj and caused damage to the vehicle by throwing brick bats and caused injuries to

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the occupants after pulling them out had turned into an unlawful assembly but from the evidence on record and the circumstances it is not established that even the members of such a mob shared the common object of killing the District Magistrate, Gopalganj. Some of the processionists who were on the vehicles close to the place of occurrence could have come out of their vehicles to find out the reasons for the commotion but in such circumstances when nobody was even aware that the DM, Gopalganj would be passing from that place, such persons by their presence at or near the place of occurrence cannot be held as members of the unlawful assembly actuated by any common object. Those who could be identified as the persons who participated in the assault by throwing brick bats or by other means or person who allegedly fired the shots at the deceased, namely, Bhutkun Shukla could definitely be held as members of the unlawful assembly. The appellants are alleged to have either exhorted or merely be present without any arms or weapons.

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48. At this point it would be relevant to refer to two judgments cited on behalf of the appellants in support of their contention that ingredients of Section 149 of the Indian Penal Code are not attracted against the appellants. In the case of Chanda v. State of UP, (2004) 5 SCC 141, the Supreme Court held that to

attract Section 149 IPC mere presence is not enough unless there be- (i) a common object, (ii) the accused was actuated by that object and (iii) the object is one covered by Section 141 of the IPC. In the case of State of Punjab v. Sanjeev Kumar, AIR 2007 SC 2430, the same principle was reiterated. In this judgment the earlier judgments of the Apex Court in the case of Masalti and ors. V. State of UP, AIR 1965 SC 202 and in the case of Lalji v. State of UP, (1989) 1 SCC 437 were noticed and appropriately quoted. It was highlighted in paragraph 8 that " where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149". It was also observed that as a general proposition of law it cannot be laid down that unless an overt act is proved against a person who is alleged to be a member of the unlawful assembly, it cannot be said that he is a member of an assembly. " The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word object means the purpose or design and in order to make it common, it must be shared by all. In other words, the object should be common to the persons, who composed the assembly i.e. to say they should all be aware of it and concur in it ". In paragraph 12 of that judgment the following observation in Lalji v. State of UP

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(supra) was quoted- "Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case." Applying the aforesaid proposition of law to the fats of the present case it is found that the prosecution witnesses are mostly unaware about the exact nature of the assembly which was present on the right flank of the road and which for unknown reasons started shouting "Maro Maro", pelting stones and attacked the vehicle of the deceased and the occupants. The injury report of the photographer, P.L.Tangri (exhibit 7) and the evidence of PW 23 Dr Nagendra Prasad Singh shows he received injuries by broken bricks which is also supported by the findings of the first IO at the place of occurrence. As against it, according to the prosecution case, one person, Bhutkun Shukla, fired thrice to cause his death. Although it is alleged by the police witnesses of category I that the District Magistrate, Gopalganj was earlier assaulted but the doctor has found no other injury except three firearm injuries on the person of the deceased. The appellants are not alleged to have used any brick bats or any other arms. There is no allegation that they were carrying any arms. So far as the behaviour of the assembly at or before the scene of the occurrence is concerned, the evidence is again

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insufficient or negligible. On behalf of the State it was argued that the car of the District Magistrate was blocked and attacked by those very persons who were members of the funeral procession and were moving by vehicles on the National Highway at the time of the alleged occurrence. This argument is not found acceptable because the motorcade or procession moving on vehicles stopped only after hearing the shout of "Maro Maro". The evidence of PW 12, Sub Divisional Officer, Muzaffarpur East clearly indicates that at the place of occurrence he found persons fleeing on foot towards Khabra village. He has also deposed that he did not see anybody on foot in the procession when it reached village Khabra. In paragraph 44 he replied that at village Khabra a crowd of about 2000 local persons had assembled. In view of such evidence and the evidence of the driver and bodyguard that they could not pass from the left side of the road because of presence of persons on the flank while the funeral procession was moving clearly shows that the attack on the car of the District Magistrate, Gopalganj and the occupants was sudden act of a mob gathered to watch the funeral procession near village Khabra. What led to the anger of the mob has not been brought on record by the driver or the bodyguard. They appear to be anxious to show that they had committed no mistakes leading to the occurrence in which the District Magistrate was killed. Hence, there

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is hardly any relevant fact and circumstances brought on record of the case by the prosecution to reflect on the behaviour of the assembly present on the flank of the road near village Khabra at or before the time of the occurrence.

49. In view of the aforesaid discussion it is found that the processionists who were going with the dead body on motor vehicles did not have any common object so as to constitute an unlawful assembly till the motorcade stopped. Hence, only on account of being a participant in the funeral procession going on the National Highway by motor vehicles, no accused/ appellant can be fastend with the guilt of Section 302 of the IPC with the aid of Section 149 of the IPC. Mere identification by two or more persons that the appellants were amongst funeral procession cannot be made the basis for conviction of the appellants, as done by the trial court. In order to find out what happened at the place where the deceased was assaulted after the motorcade stopped and the individual role of the appellants at the spot and the quality of evidence in support of the allegations relating to assault on the deceased needs careful scrutiny in order to find out whether some persons of the procession turned into an unlawful assembly and developed a common object at that particular stage of events on account of their acts as may be established by reliable evidence.

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50. In order to analyze the evidence on record in the light of discussion made above it will be useful to reiterate that assault on the deceased District Magistrate and on his vehicle at the place of occurrence leading to damage to the vehicle and vital injuries to the deceased are well established and need no discussion. For the purpose of finding out whether the appellants developed common intention and were actuated by it, the individual act and role of the appellants at the place of occurrence after the motorcade had stopped has to be examined carefully and for that, it will be necessary to revert back to the oral evidence available on record. From the evidence of prosecution witnesses it is clear that out of 17 alleged eye witnesses three police officials, PW 9, NP Dev, PW 5 Gaya Prasad Choudhary and PW 10 Raja Ram and also the Driver and Bodyguard of the deceased District Magistrate i.e. PWs 17 and 21 went back from the place of occurrence to Muzaffarpur hospital. PW 13 also returned to Muzaffarpur from Gorul PS. The deceased as per the medical evidence, had died instantaneously and that is corroborated by lack of any documents to show his treatment at the hospital. At 6.15 pm in the hospital itself PW 9 prepared the Inquest Report (Ext.5). By 7.40 pm, as per evidence of P W 16, Dr Mumtaz Ahmad, the postmortem examination had also commenced. On considering arguments of both the sides it is found that there is no

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reliable explanation for not recording the FIR by any of these five witnesses or by PW 13 soon after the occurrence. The police station and the hospital were situated in Muzaffarpur town and the police station was only at the distance of 3 kilometers from the place of occurrence. Considering the seriousness of the occurrence and presence of so many alleged eye witnesses including police officers, a delay of six hours in the facts of the case raises a reasonable doubt that the FIR was purposely delayed and was lodged after due deliberations and consultations amongst various persons as admitted by the informant, PW 14 in paragraphs 64 and 71 of his cross-examination. It is further found that only the informant has insisted that he and other officials left Hajipur with the arrested accused persons at 7 pm whereas most of the witnesses have admitted that they left Hajipur at about 9 pm and one (PW 11) has admitted to have left at 12.00 in the night so as to reach Muzaffarpur at 2.00 in the night along with others. The sanha entry at Hajipur recorded at 2.30 am on 6.12.1994 also creates sufficient doubt regarding claim of the informant of leaving Hajipur with the accused persons and other officials at 7.00 pm on 5.12.1994. The distance between Hajipur and Muzaffarpur as per evidence on record was about 50 kilometers and required about 1 ½ hours to cover. The informant himself has admitted that writing/ typing of the long FIR would take

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more than one hour. He admits prior discussion and recording statements of others before recording of the FIR. All these facts taken together raise a doubt that the FIR does not show the correct date and time when it was actually lodged. It is further relevant to notice that the FIR mentions the name of Dy.S.P., Dhiraj Kumar as the investigating officer who admittedly joined after leave on 6.12.2004 and took up investigation at 8.15 am from the first I.O. PW 25, CP Kiran. The latter has deposed that he went to the police station in the night on 5.12.1994 and took up investigation without any delay. In paragraph 49 he has admitted that when he took up investigation of the case he did not find the accused persons in the police station although it is mentioned in the FIR that apprehended accused persons had been brought from Hajipur and kept in the police station. What is most surprising is that he has admitted in paragraph 48 that between the night he took over charge and handed over charge of investigation, he had no knowledge as to when the accused persons came from Hajipur to Muzaffarpur. These facts emerging from the evidence also create a reasonable suspicion aboiut the FIR being ante timed and ante dated.

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51. Three judgments were cited on behalf of the appellants on the issue of delay in loding the FIR and its effect- (i) AIR 1988 SC 1158 (Awadhesh v. State of MP) (ii) (2006) 2 SCC

250 (Om Prakash v. State of Haryana) and (iii) AIR 2002 SC 1949 (Bijoy Singh v. State of Bihar). In the first case the police officers and District Magistrate had reached the place of occurrence within few minutes of the murder and eye witnesses were present at the spot and police station was few furlongs away and hence, delay of less than three hours in lodging of the FIR was held to be fatal, more so when there were materials to show that FIR was wrongly shown to have been lodged within one hour when in fact, it was written after three hours. In the other case the complainant was a police official, the police station was about 50 yards from the place of occurrence and in the light of certain other discrepancies in the prosecution case, the delay in lodging the FIR was treated as sufficient to raise doubt as to the prosecution case. In the third case there was delay of about 9 ½ hours when the police station was close to the hospital where the injured was taken by the witnesses. Along with other circumstances, the delay was considered to be a factor to render involvement of some of the other accused persons doubtful. In that case 12 accused had been convicted but on the basis of delay in the FIR and improvements made in the deposition in court, 10 persons were given benefit of doubt.

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52. On the other hand on behalf of the State it was submitted that since a District Magistrate was killed in the

occurrence, the circumstances were extra-ordinary that caused the delay which was not deliberate. Learned counsel for the State also relied upon two judgments – (i) AIR 1991 SC 1672 (Erram Santosh Reddy v. State of AP) and (ii) (2003) 2 SCC 518 (Amar Singh v. Balwinder Singh). The first case was under the Terrorist and Disruptive Activities (Prevention) Act and the report was lodged after six hours in the concerned police station after raiding and effecting recoveries from the concerned premises. The time taken in making recoveries and then lodging a report, in the circumstances of the case was treated to be of no consequence. In the other case although there was a delay of more than 24 hours in recording the FIR, it was held that there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It would depend upon the facts and circumstances of each case whether there has been any such delay which may cast doubt in respect of the prosecution case and for this a host of circumstances like condition of informant, the nature of injuries sustained, the number of accused, the time taken to provide medical aid, the distance of the hospital and the police station etc. require consideration. In that case witnesses were also injured and one of them died in the next morning and in those circumstances the delay was not treated to be fatal.

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53. The law laid down by the Apex Court in the case of Amar Singh (supra) is clear and exhaustive. On the touchstone of those principles, on the facts of the case it is found that the delay in this case creates reasonable doubt regarding veracity of the prosecution case and cannot be ignored because there are host of other circumstances to warrant such an inference. The prosecution witnesses have claimed that many of the vehicles carrying them were fitted with wireless sets and an immediate information of the occurrence was given to the police control room as well as to the District Magistrate. Exhibit A/5, a sanha entry no.142 recorded at Sadar PS at 4.35 pm of the date of occurrence shows that a rumour was heard that some assault had taken place at Khabra and hence, one ASI of Police, R.B.Sinha (not examined) was sent to enquire into the rumour. Exhibit A/4, a sanha entry no.144 of the same PS recorded at 5.15 pm mentions the report of ASI RB Sinha that District Magistrate, Gopalganj had sustained grievous injuries. It only names Anand Mohan and Lovely Anand as members of the funeral procession which is alleged in general and bald terms to have attacked and caused injuries to the DM, Gopalganj. There is no mention of any exhortation or shooting by Bhutkan or anyone. Withholding ASI R.B.Sinha from deposing as a witness has prevented the court from knowing as to what he found

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at the place of occurrence, whom he met there and why he did not lodge FIR or go to the hospital for recording the FIR on the statements of any of the five witnesses who allegedly went to the hospital with the injured District Magistrate. In such circumstances, the lodging of the FIR shown to have been done at 10.10 pm is found to be suspicious and suffer from unreasonable delay creating doubt that improvements have been made after discussion.

54. On behalf of the appellants it was further submitted that the nature and direction of firearm injuries appearing from the medical evidence of PW 16, Dr Mumtaz Ahmad and the postmortem report do not support the ocular account of occurrence in which the assailant allegedly fired three shots in standing position from one place at the injured District Magistrate while he was lying injured on the ground. It was submitted in respect of injury no.(i) that when the injured was lying on the ground before the shooting, it was not possible for the shot to enter on the lateral side of left eyebrow and make an exit from central part of forehead above the eyebrow. It was also pointed out that second wound of entry on the left cheek of a person lying on the ground will cause injury downwards when the assailant is in standing position as alleged and will not come sideways out of opening of the mouth. In respect of third injury it was pointed out that this injury shows wound of entry on the right

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parietal region of head whereas the first two injuries are from the left side and the exiting wound was found on the left parietal region showing that the shot had traveled in horizontal position which cannot be possible if assailant was standing and even if the victim could move his head from one side to another which is also improbable because this shot itself was fatal and the shot as per injury no.(i) had caused fracture of frontal bone and brain material was protruding out. It was also pointed out that the second injury showed no marks of singeing or burning which indicates it was fired from a longer distance in comparison to other two shots and the diameter of the first injury was different than the diameter of injuries no. 2 and 3. This according to the defence creates a doubt regarding the ocular version of the manner of assault and claim of some of the police witnesses belonging to category I that they saw the actual occurrence of shooting. The submission is found to have merit.

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55. On the vital issue of actual conduct and participation of appellants in the alleged exhortation at the time and place of occurrence it was submitted on behalf of the appellants that none of the eye witnesses of category II, comprising of civil officials and the Driver and the Bodyguard of the deceased, i.e. PWs 12, 13, 20, 17 and 21 have supported the allegation of exhortation or the

involvement of the appellants. Even out of category I, PW 5, Gaya Prasad Choubey who was with PW 9, NP Dev did not hear anyone ordering or exhorting to kill the deceased. Thus, out of 17 alleged eye witnesses six do not speak of exhortation. Out of the remaining 11 prosecution witnesses, six witnesses namely, PWs 1, 3, 4, 9, 10 and 14 have made allegation of exhortation only against appellant Anand Mohan, As noticed earlier, PW 2 has been declared hostile because he did not name any of the appellants uttering anything at the place of occurrence and did not support their presence at that place. PW 6 has alleged exhortation only against appellants Anand Mohan and Lovely Anand. PW 8 has named them as well as appellant Prof. Arun Kumar Singh as the persons involved in exhortation. PW 11 has alleged exhortation against three persons, appellants, Anand Mohan, Lovely Anand and Akhlaque Ahmad. PW 7 has named four appellants, Anand Mohan, Lovely Anand, Prof. Arun Kumar Singh and Akhlaque Ahmad to be involved in exhortation.

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56. From the evidence on record it is found that the vehicles of the civil officials at the rear of the procession i.e. Jeeps of PW 20, the Executive Magistrate and of PWs 12 and 13, the Sub Divisional Officers were ahead of the 5-6 vehicles of police witnesses including PW 14, the informant. Further, the law is

settled that although there is no presumption that the police witnesses will not tell the truth, their evidence has to be examined with caution. In the facts of the case, the version of the occurrence given by the witnesses of category II appears to be preferable to that of category I who all are also not consistent, as noticed above, on the point of exhortation.

57. On behalf of the appellants reliance was placed upon a judgment of the Supreme Court in the case of Jainul Haque v. State of Bihar AIR 1974 SC 45 to submit that evidence of mere exhortation is inherently a very weak type of evidence. Further, on the basis of judgment of the Supreme Court in the case of Shanta v. State of Haryana, AIR 1981 SC 650, it was submitted that when so many important prosecution witnesses relied upon by the court below clearly exonerate the appellants of the charge of Section 302 read with Section 149 of the Indian Penal Code, it is sufficient to give benefit of reasonable doubt to the appellants. In that case an important witness had deposed that the appellant had entered the arena only after the deceased was fatally assaulted by others and no proselcution witness had said clearly that the appellant had actually wielded his weapon before the deceased was attacked. On the basis of one such witness the appellant of that case was given benefit of doubt. According to learned counsel for the appellants, the evidence

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of PW 5 read with evidence of PWs 12, 13, 17, 20 and 21 create sufficient reasonable doubt regarding the prosecution case that appellants, Anand Mohan, Lovely Anand, Prof. Arun Kumar Singh and Akhlaque Ahmad or any of them was involved in exhortation and or was member of any unlawful assembly. This submission merits consideration for others except appellant Anand Mohan.

58. The trial court has acquitted some of the accused persons who were named as members of the unlawful assembly by a single witness but has convicted the appellants as they are alleged to have been named by two or more witnesses. In the facts of the case, it has erred in relying upon quantity and not the quality of evidence. In paragraph 107 of the judgment under appeal the trial court has held that the prosecution has established that unlawful assembly in the procession of the dead body of Chotan Shukla reached at Bhagwanpur Chowk where some members of the procession gave fiery speeches and at Khabra cry of Maro Maro was raised from the procession or from the mob and thereafter some members of the unlawful assembly incited one member of the mob to kill the District Magistrate, Gopalganj. It also held that some members of the mob with some others were members of the unlawful assembly and the death had been caused by some members of that unlawful assembly in prosecution of common object of the unlawful

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assembly. It is found that the learned trial court did not examine the evidence and relevant issues carefully to ascertain as to when the members of the procession or members of another mob developed a common object, what was that common object and whether there was reliable evidence to show who were the members of the unlawful assembly clearly sharing and actuated by a common object in furtherance of which an assailant fired and caused death of the deceased. The evidence of witnesses of category I vis-à-vis those of category II were also not considered properly.

59. In a case of vicarious liability under section 149 of the IPC adequate caution is needed to analyze the evidence on record carefully so as to distinguish the case of mere onlookers and bystanders from those of the members of the unlawful assembly sharing a common object and actuated to participate in the assembly by such object. Such important aspects have not been properly kept in mind by the learned trial court. In the present case PW 11, KD Singh, Officer Incharge of Kazi Mohammadpur PS has shown over enthusiasm in alleging that he saw people assaulting the fallen District Magistrate with legs and shoes but in respect of appellants Anant Mohan, Lovely Anand and Akhlaque Ahmad who have been named specifically by him as persons exhorting the crowd, he has claimed that they were exhorting the crowd from their contessa car.

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Such is not the prosecution case and majority of prosecution witnesses have admitted that the contessa car was in the front of the motorcade just after the vehicle carrying dead bodies whereas the occurrence took place somewhere in the middle of the long procession having a length of ½ kilometer to 1 kilometer. Hence, PW 11 cannot be relied upon for the purpose of exhortation by some of the appellants.

60. Besides PW 11, PWs 6, 7 and 8 have named some of the other appellants besides Anand Mohan as persons indulging in exhorting Bhutkan Shukla to shoot. Their evidence has been dealt with in detail earlier. Evidence of PW 6 that after leaving the jeep they ran to the place of occurrence on foot is fully contradicted by his companion on that jeep, PW 3. Further, before the I.O. he had admittedly named 7 persons as instigators and not 2, as deposed in court. PW 7 has claimed to be present at the time of occurrence along with SDO (East) and SDO (West). This is contradicted by deposition of those executive officers, PWs 12 and 13. PW 8 also cannot be relied upon for fastening act of exhortation against appellants as he was admittedly with PW 7 and 12. As discussed earlier, PW 12 reached the place of occurrence within 2-3 minutes but before that he heard sound of firing. He could not hear anyone exhorting to kill the deceased. Hence, the aforesaid witnesses are not

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found reliable on the point of exhortation by any of the appellants. However, there remain PWs 1, 3, 4, 9, 10 and 14. All the six claim to have heard only appellant Anand Mohan exhorting the lone shooter to kill. Hence, while others are acquitted of the charge under section 302 read with section 109 of the IPC, appellant Anand Mohan is found guilty of that charge.

61. In view of all the aforesaid discussions it is found that the prosecution has failed to establish other charges against the appellants beyond reasonable doubts that they were members of an unlawful assembly and in furtherance of any common object of such assembly the deceased District Magistrate was shot dead by one Bhutkun Shukla (since deceased). It is further found that the delay in FIRas well as the medical evidence on record create doubt regarding the veracity of the prosecution case in respect of other charges. As a result, the other appellants are found entitled to acquittal for all charges whereas appellant, Anand Mohan is acquitted of all other charges but found guilty of charge under section 302/109 of the IPC.

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62. Now, the question is whether death sentence awarded to appellant Anand Mohan should be confirmed or not. He has been convicted under section 302/109 of the IPC.It is well established that death sentence should be awarded in rarest of the rare cases and for special reasons. In this case, although the

deceased was a District Magistrate but he was killed in another district as an occupant of a car which by chance earned wrath of a mob for some undisclosed reasons which led to further events ending in exhortation by appellant Anand Mohan and firing by another person, said to be already dead. Since appellant Anand Mohan is not the assailant, hence ends of justice will be served by converting the death sentence awarded to him into rigorous imprisonment for life.

63. Accordingly, the appellants- (1) Lovely Anand (2) Vijay Kumar Shukla @ Munna Shukla (3) Sashi Shekhar Thakur (4) Harendra Prasad @ Harendra Prasad Sahi (5) Prof. Arun Kumar Sinha @ Arun Kumar Singh and (6) Akhlaque Ahmad, are acquitted of all the charges. The appellants (1) Lovely Anand (2) Vijay Kumar Shukla @ Munna Shukla (3) Harendra Prasad @ Harendra Prasad Sahi (4) Sashi Shekhar Thakur, who are on bail in this case, shall stand discharged from the liability of their bail bonds. The other appellants, namely, Prof. Arun Kumar Sinha @ Arun Kumar Singh and Akhlaque Ahmad, shall be released from custody forthwith if not required in connection with any other case. The appeals of all the other appellants stand allowed. The appeal of appellant Anand Mohan is partly allowed by confining his conviction only under section 302/109 of the IPC for which he shall

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undergo rigorous imprisonment for life. The death reference in respect of all the concerned appellants is answered in the negative.

(Shiva Kirti Singh,J.)

Syed Md. Mahfooz Alam,J. **I agree.**

(Syed Md. Mahfooz Alam,J.)

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Patna High Court
The 10 th December, 2008.
AFR Perwez/ S.Kumar